Global Crossing North America, Inc.
Legal Services
180 South Clinton Avenue
Rochester, NY 14646
Fax +1.716.546.7823

DOCKET FILE COPY ORIGINAL

Michael J. Shortley, III
Senior Associate General Counsel
North American Operations

Telephone: (716) 777-1028
Facsimile: (716) 546-7823
email: michael_shortley@globalcrossing.com

Global Crossing

RECEIVED

JUL 1 2 2000

FCC MAIL ROOM

July 11, 2000

BY OVERNIGHT MAIL

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D.C. 20554

Re: CC Docket Nos. 96-262, 97-146

Dear Ms. Salas:

Enclosed for filing please find an original plus four (4) copies of the Comments of Global Crossing North America, Inc. in response to the Commission's Public Notice, DA 00-1268.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: International Transcription Service

Ms. Jane Jackson
Chief – Competitive Pricing Division

RECEIVED
JUL 1 2 2000
FCC MAIL ROOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	**CC Docket No. 96-262**
	)	
Hyperion Telecommunications, Inc. and Time Warner Petitions for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers	)	**CC Docket No. 97-146**

COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

Introduction

Global Crossing North America, Inc. ("Global Crossing") submit these comments in response to the Commission's Public Notice[1] regarding detariffing of interstate access services provided by competitive local exchange carriers ("CLECs"). In the Public Notice, the Commission suggests that mandatory detraining of CLEC interstate access services may produce significant public interest benefits.[2] The Commission bases this conclusion upon its decision to impose a mandatory detariffing regime upon domestic interstate, interexchange carriers, a decision recently upheld by the D.C. Circuit.[3]

The Commission apparently believes that there are parallels between the interexchange market and the market for interstate access services. This fundamental premise is erroneous. As such, rather than impose a detariffing regime, the

1 Public Notice, *Commission Asks Parties To Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services*, DA 00-1268 (Com. Car. Bur. June 16, 2000) ("Public Notice").

2 *Id.* at 2.

3 *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

Commission should heighten its tariff regulation of CLEC access charges. The basic difference between the two markets is simple and, of itself, explains the need for heightened scrutiny of CLEC access charges. In the long distance market, the carrier and the end user have a direct relationship. The customer affirmatively chooses to use the services of a particular interexchange carrier ("IXC"). The customer may presubscribe its telephone line to that carrier, reach the carrier through casual calling or use a calling card issued by that carrier. Even for inbound services, (*e.g.*, 8XX services), the customer actually footing the bill selects the carrier to handle its inbound services. If the customer is dissatisfied with its chosen carrier, the customer may always select another carrier. Competition in the long distance business is robust and the costs of changing long distance carriers are minimal.[4]

The interstate access business is entirely different. Access charges are assessed upon the long distance carriers by the local exchange carrier ("LEC"). Yet, the IXC and LEC have no direct relationship. The end-user customer selects the LEC and the IXC independently. The IXC has little or no say in the LEC that the end-user selects and the IXC often does not know which LEC the end-user has selected until it starts receiving access bills from the LEC. This is usually not a problem with respect to incumbent local exchange carriers ("ILECs"), because the Commission regulates ILECs as dominant carriers and, therefore the rates, terms and conditions governing their interstate access services are subject to extensive scrutiny by this Commission.

However, the Commission currently regulates CLECs as non-dominant carriers. CLECs interstate access services are subject only to a permissive detariffing regime

[4] Typically, the only cost of changing long distance carriers is a primary interexchange carrier ("PIC") change charge that is assessed by the local exchange carrier. That

and thus CLEC access tariffs receive limited or no scrutiny. Because IXCs are merely unwilling and, often unwitting, recipients of CLEC access services, they are subject to excessive access pricing by certain CLECs.

This represents a classic case of market failure that mandatory detariffing will not solve. Rather than adopt a mandatory detariffing approach, the Commission should subject CLEC access services to heightened scrutiny.

Argument

THE COMMISSION SHOULD DECLINE TO ADOPT A MANDATORY DETARIFFING REGIME FOR CLEC INTERSTATE ACCESS SERVICES.

The Commission's attempt to equate the long distance and interstate access markets is fundamentally flawed. While mandatory detariffing of interexchange services may produce public interest benefits,[5] it would be disastrous if applied to the interstate access services provided by CLECs. The current permissive detariffing regime has produced results that can be described as anomalous at best. Mandatory detariffing would only worsen the situation.

A. The Commission's Permissive Detariffing Regime for CLEC Interstate Access Services is Best Described as a Failure.

The Commission has witnessed numerous accounts of CLECs that have engaged in excessive access service pricing. To compound the problem, the Commission has been reluctant to take action to correct these problems.

---

charge is usually five dollars and, in many cases, is reimbursed by the new carrier.

5 For the reasons stated in the briefing to the D.C. Circuit (*see MCI Worldcom, Inc. v. FCC, NO. 96-1459*, Joint Brief of Petitioners and Supporting Intervenors (D.C. Cir. filed Nov. 9, 1999)), Global Crossing sincerely doubts that this will be the case.

Certain CLECs are currently charging access rates that are absolutely exorbitant. MGC Communications, for example, currently charges a local switching rate of seven cents per minute. Its rate for local transport also exceeds the average ILEC rate by approximately 260%.[6] MGC is also attempting to collect these exorbitant rates despite its shoddy billing practices from a number of IXCs, including Global Crossing.[7] MGC is not alone. Even the Commission acknowledges that it has sought comment on the subject in previous dockets.[8]

Moreover, even when interexchange carriers attempt to rectify the problem through negotiation or complaint proceedings, the Commission appears reluctant to act.[9]

This simply points to the fact that the issue of CLEC access charges is in need of prompt Commission action.

B. Mandatory Detariffing Is an Inappropriate Solution to the Problem That the Commission Has Identified.

In the Public Notice, the Commission identifies a number of benefits that it believes mandatory detariffing of CLEC access charges may entail.[10] It bases its belief on its decision -- recently affirmed by the D.C. Circuit[11] -- to institute mandatory detariffing of domestic interexchange services provided by non-dominant carriers.[12]

---

6 *See Sprint Communications Company, L.P.*, File No. EB-00-MD-002, Memorandum Opinion and Order, FCC 99-206 at 3 n.6 (June 2, 2000) ("Sprint Order").

7 *See MGC Communications, Inc. v. Global Crossing Telecommunications, Inc.*, CV-5-00-07089-HDM-LRL, Complaint (D. Nev. filed May 25, 2000).

8 Public Notice at 1 n.1.

9 *See, e.g.,* Sprint Order.

10 *Id.* at 2.

11 *MCI WorldCom, Inc. v, FCC*, 209 F.3d 760 (D.C. Cir. 2000).

12 Public Notice at 1-2.

The analogy that the Commission attempts to draw between the two market segments is fundamentally flawed and its tentative conclusion is, therefore, erroneous. In the first instance, the two market segments are fundamentally different. In the interexchange segment, a willing buyer (an end-user customer) and a willing seller (an interexchange carrier) are the contracting parties and, therefore, are able voluntarily to enter into arms-length commercial relationships with each other. In addition, the buyer has numerous alternatives available to it and the transaction costs associated with changing suppliers are low. In this competitive environment, a mandatory detariffing regime may yield benefits.[13]

The access market -- CLEC or ILEC[14] -- is fundamentally different. An end-user customer selects a local provider -- a CLEC, in this case -- and a long-distance provider. The end-user customer sees a bill from the CLEC for its local service and a bill from the long-distance provider for its long distance service. So long as both are reasonable, the end user is indifferent to the level of access charges that the CLEC assesses upon the long-distance provider.

Yet, the decisions of the end-user force a CLEC and an IXC into an essentially involuntary arrangement. This may not be an issue if the LEC's rates are at least predictable -- as are the ILEC's access rates. It is an issue when the IXC has no say in the choice of access provider -- which it does not -- *and* when the access provider's rates are subject essentially to no regulatory oversight.

---

13 *But see supra* at 3 n.5.

14 There are relatively few issues in this regard with ILEC access charges because the ILECs are subject to regulation as dominant carriers. This is not to minimize the debate over the level of ILEC access charges, but it does serve to emphasize the value of a regime of actively supervised rate regulation where such oversight is appropriate.

In the CLEC access segment, there is no willing buyer and willing seller that are able to enter into mutually advantageous commercial relationships. An externality -- an unwilling third party -- is present. The necessary prerequisites for a mandatory detariffing regime -- a willing seller and a willing buyer that can engage in arms-length negotiation and the presence of suitable supply alternatives -- simply does not exist in the access business.

In addition, the Commission's mandatory detariffing proposal would have a number of undesirable consequences that would result from the peculiarities of the access market. It would require otherwise unwilling participants to negotiate transactions in which the ultimate decision-maker -- the end-user customer -- is indifferent. This would inevitably result in IXCs and CLECs not agreeing as to the reasonableness of the access rates that the CLEC proposes to charge. As discussed above,[15] this has already happened.

This situation would force the Commission to adopt one of two equally unpalatable alternatives. The Commission could either require an IXC to take service from a CLEC with which it would prefer not to transact business. This would force the IXC to be saddled with additional, unwanted costs that it effectively could not allocate to the cost-causer -- the end-user that chose the unwanted CLEC. One predictable result of this alternative outcome would be a series -- if not a flood -- of complaints filed with the Commission regarding the reasonableness of CLEC access rates.

---

[15] *See supra* at 4.

The other alternative would be to permit IXCs to refuse to accept either originating or terminating traffic from a CLEC absent a negotiated agreement. In this event, end-user customers would find their own choices constrained and would experience even more confusion and frustration than they already experience. A consumer would now need to determine which local provider to choose in order to determine if they could also choose its preferred long-distance provider.

Not only would this state of affairs be confusing to consumers, it would also not bode well for local exchange competition. Consumers would soon become aware that the only sure way to be able choose their preferred long-distance carriers would be to select the ILEC as their local provider. The fact that there are CLECs attempting legitimately to serve the needs of their local telephone subscribers -- instead of subsisting on inflated access charges and reciprocal compensation -- would become largely irrelevant. Consumers would automatically prefer the ILEC and competition in the local exchange market would be severely diminished.

Even if this worse case result did not happen, the Commission's mandatory detariffing proposal is rife with opportunities for discrimination. Relative bargaining power could result in disfavored IXCs being charged more for access services than other similarly situated IXCs. The opposite could also be true as less fortunate CLECs could be forced to accept lower access charges than other CLECs that serve the same areas.

In short, the market structure necessary for mandatory detariffing to work does not exist in the CLEC access business segment.

C. Rather Than Adopt Mandatory Detariffing, the Commission Should Effectively Cap CLEC Access Rates.

As Global Crossing has demonstrated above,[16] the Commission's mandatory detariffing proposal constitutes a bad public policy choice. The *status quo* is also unacceptable.[17]

The alternative that the Commission did not set forth in the Public Notice, but must consider, is some form of tariff regulation of CLEC access rates. Global Crossing recognizes -- as does the Commission[18] -- that the access charges assessed by the surrounding ILEC may not be the appropriate benchmark to judge the reasonableness of CLEC access rates. Nonetheless, some benchmark is appropriate. Access rates -- such as those charged by MGC[19] and, undoubtedly others -- are totally unreasonable.

Global Crossing suggests that the Commission use the access rates contained in the NECA Tariff F.C.C. No. 5 as a benchmark for judging the reasonableness of CLEC access rates and require CLECs to continue to file interstate access tariffs.[20] The Commission should deem access rates at or below the benchmark to be presumptively reasonable and rates above the benchmark to be presumptively unreasonable.

CLECs attempting to justify rates above the benchmark would bear the burden of proof in demonstrating the reasonableness of their rates, whether in the context of a section 205 investigation, a section 208 complaint or otherwise. In any such

---

16 *See* Part B *supra.*

17 *See* Part A *supra.*

18 Sprint Order, ¶ 6.

19 *See supra* at 4.

20 The Commission should consider requiring CLECs to file tariffs and tariff revisions on more than one day's notice.

proceeding, the Commission should primarily consider the costs of providing service, although it would still be able to consider other relevant factors.

Global Crossing believes that this proposal strikes an appropriate balance. It would permit CLECs to recover their reasonable costs of doing business, yet it would prevent CLECs from charging excessive access rates to captive IXC customers. Global Crossing's proposal also carries with it one substantial and overriding public interest benefit. Adoption of Global Crossing's proposal would require CLECs to focus on what competition should really concern -- the end-user customer. By tariffing and capping access charges, the Commission would focus competition where it should matter most. If the Commission truly wishes the promised benefits of the Telecommunications Act of 1996 to materialize in the local exchange market, it should adopt Global Crossing's proposal.

Conclusion

For the foregoing reasons, the Commission should act upon the proposals contained in the Public Notice in the manner suggested herein.

Respectfully submitted,

Michael J. Shortley, III

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

Attorney for Global Crossing
North America, Inc.

July 11, 2000

Certificate of Service

I hereby certify that, on this 11th day of July, 2000, copies of the foregoing Comments of Global Crossing North America, Inc. were served by first-class mail, postage prepaid, upon the persons on the attached service list.

Michael J. Shortley, III